Agriculture

Rural Business–
Cooperative
Service

Service
Report 55

USDA

# Agricultural Bargaining In a Competitive World

*Highlights:*

42nd National and Pacific Coast

Bargaining Cooperative Conference

December 4–6, 1997

Portland, Oregon

## National Committee of Cooperative Agricultural Bargaining and Marketing Associations

**President**
John Welty
California Tomato Growers Association
P.O. Box 7398
Stockton, CA 95267-0398

**Vice President**
Adin Hester
Olive Growers Council of California
121 E. Main Street, Suite 4
Visalia, CA 93291

**Treasurer**
Ronald A. Schuler
California Canning Peach Association
P. O. Box 7001
Lafayette, CA 94549-7010

**Secretary**
Michael Klein
Hazelnut Growers Bargaining Association
8101 SW Nyberg Road, #201
Tualatin, OR 97062

**Assistant Secretary**
Andrew A. Jermolowicz
USDA/RBS
STOP 3252
1400 Independence Ave., SW
Washington, DC 20250-3252

**Directors**
William Ferriera
Apricot Producers of California
2125 Wylie Drive, Suite 2A
Modesto, CA 95355

Vaughn Koligian
Raisin Bargaining Association
3425 N. First, Suite 209
Fresno, CA 93726-6819

Vernon DeLong
Agricultural Bargaining Council
744 Main Street, Suite 6
Presque Isle, ME 04769

John Mumford
Ontario Vegetable Growers' Marketing Board
435 Consortium Court
London, Ontario CANADA N6E 2S8

# Preface

These proceedings are published by the Cooperative Services program of USDA's Rural Business-Cooperative Service (RBS) at the request of the bargaining and marketing cooperatives. This 42nd National Bargaining Conference was combined with the Pacific Coast Bargaining Conference Dec. 4-6, 1997, at Portland, OR.

Proceedings include speeches delivered at the conference and related information. Opinions expressed reflect views of participants. The proceedings should not be viewed as representing the policies of the United States Department of Agriculture. Use of commercial names does not constitute endorsement.

Copies of the proceedings may be obtained from RBS-Cooperative Services, STOP 3250, 1400 Independence Ave., SW, Washington, DC 20250-3250.

September 1998
Price: Domestic $5; foreign $6

## Contents

# Cooperative Bargaining in the Next Millennium

Randall E. Torgerson, Deputy Administrator
Rural Business-Cooperative Service

While it's typical to talk about issues forthcoming in the new decade, we seldom have the opportunity to talk about the new millennium! That task can overwhelm one as being challenging, overbearing, and awesome. We are reminded, however, that past is prologue, even in these fast changing times.

As this millennium closes, we can observe that a strong foundation has been laid through laws for supporting group action in agriculture. The Capper-Volstead Act of 1922, Cooperative Marketing Act of 1926, Agricultural Marketing Act of 1929, Agricultural Marketing Agreements Act of 1937, and the Agricultural Fair Practices Act of 1967 (AFPA) have each provided growers with certain tools to advance their position in the marketplace.

Although solid use has been made of these sanctions, they have neither been pushed to their ultimate in degree of organization by producers nor in the pricing of products to the market. One factor limiting the latter is that when independent production decisions are made by growers, an unintended outcome is the potential for overproducing markets and thereby depressing prices, even when bargaining associations and/or marketing cooperatives exist.

This factor has been the Achilles' heel of the agricultural production industry for many years. Developments helping to address these weaknesses include increasing use of contractual arrangements, particularly in the fruit and vegetable industries, and the organization of so-called "new generation" cooperatives which attempt to tailor members' production to effective demand. A third development is the unique and important relationship between growers' professional associations working closely with marketing cooperatives to further growers' interests in the marketplace and in political circles. But even these factors do not address the changes in production levels that occur naturally among tree crops, or the vagaries of weather and disease that can affect production from season to season and year to year.

For these reasons extensive use of State and Federal marketing orders, Section 32 purchases, tree pulls, reserve pools, and other means have been used to manage inventories and to develop market demand for crops and their products, including budding export markets.

Looking ahead, it is likely that the need for negotiated pricing will increase in dealing with production and marketing of identity-preserved products and increased use of contracting for production **and** services in both the crop and livestock sectors. There are some basics of the bargaining process that need to be protected and enhanced as the institutional framework for bargaining continues to develop. While associations in some States like California are reasonably happy with achievements under State law, associations in many other areas of the country, like potato growers in Idaho, Oregon, and Washington, experience deficiencies. So they continue to look at developing a national statute with more teeth in it.

An important factor in determining the success of bargaining in coming years will be the mechanisms and institutional arrangements provided for in Federal and State laws that support it. Next spring we will mark the 30th anniversary of the Agricultural Fair Practices Act (AFPA). For the first time in nearly two decades, amendments to the Act are being considered. What, if any, changes are made is an important issue for all producers.

As you may remember, the American Farm Bureau Federation, with the help of leaders from this conference like Ralph Bunje, drafted and had introduced in Congress in May 1964, legislation to protect bargaining

---

Talk presented to the National and Pacific Coast Bargaining Conference, Portland, Oregon, Dec. 5, 1997.

associations from discrimination. The AFPA of April 1968 applied anti-discrimination provisions to producer associations as well as processors, protected certain processor practices, and contained a diluted enforcement provision.

The most damaging change to the Farm Bureau proposal was the addition of a disclaimer of intention to prohibit normal dealing. It provides that nothing in the Act shall:

- Prevent handlers and producers from selecting their customers and suppliers for any reason other than a producer's membership in or contract with a producer association, or

- Require a handler to deal with an association of producers.

## Weaknesses in the Agricultural Fair Practices Act

As producers began to live under the AFPA, several weakness became apparent. The most obvious was the Disclaimer Provision. The language permitting processors to refuse to do business with a producer for any reason other than membership in a producer association leaves association leaders and members vulnerable to discrimination, disguised as legitimate reasons to refuse to deal.

The phrase stating processors aren't required to deal with producer associations gives processors justification to totally disregard a producer association, or to go through the motions of negotiating and then, at some critical period when producers are under the greatest pressure, walk away from the table and offer growers take-it-or-leave-it contracts.

A second weakness in the Act is that it doesn't provide an inducement for handlers to negotiate with producers. There is no requirement that handlers bargain in good faith with producer associations. Nor is there any mechanism to resolve disputes during negotiation. Thus, even if honest bargaining occurs, there is no assurance that a contract is likely in time for orderly marketing of the farmers' production.

A third weakness is the lack of sufficient penalties for handlers who violate the Act. The only penalty that can be assessed in a suit by the Government is an order against further illegal conduct. As a result, there is little motivation for Government prosecutors to accept AFPA cases or for handlers to fear meaningful sanctions if the Government brings a lawsuit.

The most a private litigator can realize is damages and attorney's fees. If a violator pays only damages when discovered and successfully sued, there is little incentive to follow the law.

A fourth weakness is the ease with which growers who aren't members of a bargaining association can freeload on the successes of the cooperative. Nonmembers almost always receive prices and other terms of trade at least as favorable as those of association members. Yet, they pay no fees to support negotiation. This serves as a disincentive for producers to join the association and reduces the association's power at the bargaining table.

## State Laws

Producers in a number of States have convinced their legislature to provide support for agricultural bargaining. While no two State laws are identical, common provisions do appear among the jurisdictions.

A. A statement of unfair or prohibited practices, based on the prohibited practices section of AFPA (California, Maine, Michigan, Minnesota, New Jersey, Ohio, Oregon, and Washington).

B. A requirement that handlers bargain in good faith with producer groups (California, Maine, Michigan, Minnesota, Ohio, and Washington).

C. A program to facilitate settling disputes between producers and handlers through mediation (California, Michigan, and Minnesota) or binding arbitration (Maine and Michigan).

D. A requirement that handlers, when asked, deduct fees from checks for product to grower-members and send the funds to the bargaining association (California, Idaho, Maine, and New Jersey).

**Supreme Court and Pre-Emption**
In 1984, the U.S. Supreme Court invoked the supremacy clause of the constitution to find two provisions of Michigan's bargaining law invalid because they were pre-empted by provisions of AFPA (*Michigan Canners & Freezers Ass'n v. Agricultural Marketing and Bargaining Board*, 467 U.S. 461).

The Michigan law did not require a producer to join an association. However, a nonmember could be compelled to honor an association's contract with a processor and to pay fees to an association. The court found this had the same effect as coercing the nonmember (1) to join an association, a violation of the Federal Act (AFPA), and (2) to enter into a marketing agreement with an association, also a violation of the Federal Act.

This case could cast a cloud of uncertainty over any State laws that provide producer protections beyond those in the Federal Act.

**Possible Changes to Existing Federal Legislation**
Over the years, often as part of this conference, bargaining association leaders and advisers have discussed a menu of amendments to the Federal Act. These ideas have appeared to have the most support.

**Repeal of All or Part of the Disclaimer Provision**—The U.S. Supreme Court has ruled that the Federal Act pre-empts conflicting State laws. Thus, the last portion of the Disclaimer clause, stating processors need not deal with producer associations, places in jeopardy existing State laws that provide for good faith bargaining and third-party assistance (mediation, conciliation, and arbitration) in resolving negotiation impasses.

Repeal of the entire disclaimer would also delete the connotation that processors are free to refuse to do business with association members or leaders if they can come up with any other possibly defensible reason to discriminate other than association participation.

**Require Good Faith Bargaining**—Designating failure to bargain in good faith a prohibited practice under the Federal Act, coupled with repeal of the last portion of the Disclaimer, would give bargaining associations leverage to compel negotiations. Such a change would likely spur bargaining as a means of counterbalancing processor economic power.

**Dispute Resolution Mechanism**—Disinterested third-party participation in the bargaining process has proven useful in getting a negotiated contract. Mediation and conciliation encourage settlement without disrupting the marketplace by forcing parties to accept contract terms against their will.

Adoption of good faith bargaining and a dispute resolution mechanism at the Federal level would put producers and processors in the same relative position across the country. If a private mediation service is used, such as the American Arbitration Association, with the parties sharing the costs (as is done in California), these changes should have little budget impact.

**USDA Civil Enforcement Authority**—Giving the Secretary of Agriculture the power to assess civil penalties for violation of the Act would likely improve compliance. It would place responsibility for reviewing potential violations in the hands of those persons most familiar with the intent of the law and who possess the expertise to evaluate whether punitive action is appropriate.

**Proposals for New Bargaining Legislation**
The USDA Report on Concentration in Agriculture contained recommendations for modifying the AFPA enforcement provisions. It also emphasized the important role of the Capper-Volstead Act of 1922 that encourages cooperative marketing. Finally, it recognized the difficult circumstances encountered by growers operating under piece-wage contracts—like contract broiler and hog growers—and urged improvements in their ability to negotiate with corporate integrators.

Since this report was issued, two significant developments have occurred. One is that USDA is supporting amendments to the AFPA to strengthen enforcement provisions. Secondly, a more comprehensive bargaining bill has been introduced by Congresswoman Marcy Kaptur of Ohio on behalf of the National Contract Poultry Growers Association.

Specifically, USDA's amendments would provide it with

administrative enforcement authority instead of having to take complaints through the Department of Justice for enforcement. It is believed that civil penalty authority will provide a deterrent against violations of the AFPA. Similarly, stronger enforcement provisions of AFPA could encourage more producers to form new associations or join existing associations, and increase their confidence that they will be treated fairly.

This proposed change in AFPA is significant because no budget has been granted previously to the Agricultural Marketing Service (AMS) for enforcing provisions of the Act. The amendments would provide for an administrative hearing procedure and authority to levy a civil penalty of not more than $5,000 for each violation of the Act.

Kaptur's bill is known as H.R. 2738, the "Family Farmer Cooperative Marketing Amendments Act of 1997." It would protect contract poultry and other growers by further developing an institutional framework for negotiated pricing of goods and services. Under provisions of the bill, (1) the Secretary of Agriculture establishes an accreditation system for bargaining associations, (2) good faith bargaining is provided, (3) mediation is specified as a dispute resolution mechanism, and (4) investigative and enforcement authority is given to the Secretary. These provisions follow fairly closely those found in the Michigan Bargaining Act.

### Other National Organizational Events

You have all experienced a certain amount of mergers, acquisitions, and alliances among the processors and distributors in your particular sector of the fruit, vegetable, and nut industries. The restructuring of Tri Valley Growers and purchase of German-owned hazelnut company here in Oregon by Sun Diamond Growers are just two recent examples.

What is happening in the dairy and cherry sectors is of great national interest to producers of all commodities. In dairy, four of the nation's largest dairy cooperatives have consolidated—Mid America Dairymen, Southern region of Associated Milk Producers, Milk Marketing, Inc., and Western Dairymen's Cooperative. The new organization, Dairy Farmers of America, has 22,000 producers from California to the East Coast and from Texas to Minnesota. The new chief executive officer is Gary Hanman, formerly chief executive officer of Mid-America Dairymen. It represents the horizontal combination of producers of a perishable product on a national scale. Motivating factors were the demise of Federal price support and possibly the Federal order programs, a reduced number of producers, and a desire for more influence over dairymen's incomes through greater efficiencies in handling milk, greater orientation to export markets, and more influence in negotiating with national purchasers of raw milk and milk products.

Some of you have member relations problems or issues in your own associations. Just think of the enormity of the task of communicating and keeping 22,000 farmers involved in a national marketing organization covering territory with different market characteristics! We should also carefully consider the lessons to be learned from organizing over an entire commodity sector. It's possible that cooperative bargaining associations or marketing cooperatives will attempt to do it in some of the crops grown over wide geographical areas.

In the cherry sector, a new Federal marketing order has been achieved and producer groups led by Randy Harmson of Michigan Agricultural Cooperative Marketing Association have organized a national marketing agency called CherCo.

### Summary

There is a lot of dynamic organizational change occurring at the farm and ranch, marketing, and distribution levels of the food channel. Cooperative bargaining association leaders are adapting to this change in many ways, but need to constantly remind themselves about the principal reason they were initially organized. In this respect, modifications to existing Federal law will be essential to helping secure that organizational role in the future. The USDA has recommended some preliminary steps in this direction, but it will be up to the associations represented at this conference to make it happen.

# CALIFORNIA PRODUCER'S LIEN

Ronald C. Peterson and Stephen B. Peck
Hanson, Bridgett, Marcus, Vlahos & Rudy
San Francisco, CA

## I. Background

California agriculture is a multi-billion-dollar industry and a major component of the State's economy. Financial problems in the industry, however, have been evidenced, in particular, by the failure of many canned fruit and vegetable processors over the years with resulting losses to creditors, particularly farmers. In response, California enacted a producer's lien statute to protect farmers from these losses.

## II. Nature and Scope of Lien

The California law provides for a lien upon farm products sold by a farmer who produced the products to a processor. No filing or recordation of the lien is required. The lien arises, and attaches automatically, when the products are delivered to the processor, except where there are a series of deliveries under a contract in which case perfection occurs from the date of the last delivery. The lien is indefinite in duration. The lien secures payment of the amount of the agreed price to be paid for the product by the processor to the grower or producer. If no price has been agreed upon, the lien secures payment of an amount equal to the value of the product at the time of delivery to the processor. The lien extends to all products and to the product's subsequent processed or manufactured forms while in the possession of the processor, without segregation of the product. Any portion of the farm products, or the processed or manufactured forms of such products, in excess of the amount necessary to satisfy the amount of the lien, however, is free and clear of the lien. It is arguable that the lien continues in proceeds in the processor's possession, although the statute does not specify whether it extends to proceeds such as cash or accounts receivable, and there is no case authority under which a determination has been made regarding this issue. The lien (to the extent of the agreed price or value of product) has priority over all other liens and encumbrances with the exception of certain claims for unpaid wages or salaries and warehouseman's liens under Division 7 of the Uniform Commercial Code.

## III. Release of Lien

The producer's lien continues in effect until such time as the agreed price or value of the product has been paid or the lien is released. The processor may secure a release by paying the agreed price or actual value of the farm product (if there is no agreed price); by depositing a surety bond or cash sum with the California Director of Agriculture sufficient to pay the amount of all liens released; or by designating, setting apart, and depositing in a public warehouse a quantity of any processed farm products and by endorsing over and delivering to the Director of Agriculture the warehouse receipt for such products for the purpose of guaranteeing, to the extent of the value of such deposit, payment of the amount of all lien claims. Alternatively, the grower or producer may voluntarily release the lien "upon arrangements being made for such payment which are satisfactory to the producer." Questions involving the voluntary release or waiver of the producer's lien by growers have been the subject of some litigation as discussed later.

## IV. Enforcement of Lien

### A. Rights of Producers

The producer's lien may be enforced by the farmer-producer through several alternatives. The farmer may initiate an action to foreclose the lien or maintain a personal action to recover the debt against the processor. Any judgment obtained in such personal action does not impair the lien right. In an action filed by the lien claimant against a processor, if the processor files with the court in which the action is pending a surety bond in an amount sufficient to cover the demand in the complaint, including costs, the court may order the release some or all of the product or processed product upon which the lien has attached. The farmer-producer in this may seek an injunction to restrain the processor from taking actions designed to in effect remove any processed product upon which the lien exists from the possession or control of the processor or beyond the process of the court.

## B. Processor Prohibitions

The California statute also makes it unlawful for a processor to remove from the State or beyond the processor's ownership or control, any farm product or any processed form of the farm product to which the lien has attached in excess of a quantity which is of a value sufficient to satisfy all producer's liens.

## V. Enforceability of Lien in Bankruptcy

The enforceability of the producer's lien in Federal bankruptcy proceedings is vital to the protection which the California producer's lien law is intended to afford growers and producers of farm products. Although lien rights are generally protected in bankruptcy proceedings, special provisions of the Bankruptcy Code invalidate state statutory liens under some circumstances. For example, section 545(1) of the Bankruptcy Code provides that a bankruptcy trustee may avoid a statutory lien claim if the lien first becomes effective against the debtor upon commencement of a bankruptcy proceeding or upon the occurrence of certain events of insolvency. Because the producer's lien becomes effective upon delivery, the lien is frequently avoidable under section 545(1). The bankruptcy trustee, however, also may avoid a statutory lien under section 545(2) of the Bankruptcy Code where the lien is not perfected and enforceable at the time the bankruptcy proceeding began against a bona fide purchaser, whether or not such purchaser exists. The question of whether a producer's lien is enforceable against a bona fide purchaser is determined under principles of State law.

## VI. Bankruptcy Litigation Involving Producer's Lien

The efficacy of the California producer's lien has been tested in relatively recent Federal bankruptcy proceedings. Two cases, In re Loretto Winery Ltd. and In re T.H. Richards Processing Co., have reached the United States Court of Appeals for the Ninth Circuit.

## A. Enforceability Against Bona Fide Purchaser

In re Loretto Winery Ltd. involved the validity of the producer's lien asserted by growers who sold and delivered their grapes to a winery for processing into wine and wine products. A series of grape deliveries were made under contract during the course of the 1985 harvest. Eight days after the producers' last delivery, Loretto Winery filed a Chapter 11 proceeding. The bankruptcy case was subsequently converted to a Chapter 7 proceeding, and the trustee brought an adversary proceeding in bankruptcy court, seeking to avoid the producer's lien under the Bankruptcy Code section 545(2). If the lien were avoided, the grape-grower farmers would become general unsecured creditors. The bankruptcy court granted summary judgment in favor of the trustee. It was affirmed by the appellate panel.

The grape growers appealed to the Ninth Circuit arguing that the producer's lien is not subject to avoidance under section 545(2) because, under California law, the producer's lien is enforceable against a bona fide purchaser where the debtor had possession of the product at the time of the bankruptcy filing. The Chapter 7 trustee argued that a fundamental bankruptcy policy is frustrated if producers are given a priority over other creditors by virtue of California's producer's lien law. The Ninth Circuit, in reversing the decision of the bankruptcy appellate panel and upholding the producer's lien, concluded that the filing of bankruptcy proceeding did not result in a physical transfer of the products from the debtor to the trustee as a hypothetical bona fide purchaser which would otherwise invalidate the lien under California law. In reaching its decision, the Ninth Circuit observed that a different result would allow a trustee in a Chapter 7 proceeding to avoid the lien whereas a debtor-in-possession in a Chapter 11 proceeding could not avoid the lien even under identical circumstances.

The Ninth Circuit further noted that the California producer's lien statute makes it unlawful for a processor to remove, from beyond the State of California or beyond the processor's ownership and control, any farm product or any processed form of the product to which the lien has attached. Such a violation not only subjects a processor to suspension or revocation of its processor's license and civil penalties, but also constitutes a misdemeanor punishable by fines and imprisonment in the county jail. Accordingly, the court concluded that any contract that would permit sale of a product to which the lien has attached to a bona fide purchaser without payment of the producer's lien would be void under California law.

## B. Waiver

In re T.H. Richards Processing Co. involved tomato, peach, and pear growers, who asserted producers' liens against T.H. Richards Processing Co., a debtor in bankruptcy. The issue in this case was not avoidance of the producer's lien under Bankruptcy Code section 545, but whether the producers had waived their statutory lien rights when agreeing to a 1-year deferred payment plan. The growers' contracts with the processor, in a section entitled "Release of Producer's Lien," which purported to effect a release of the producer's lien, provided for a payment schedule to be concluded 1 year after delivery, without interest. The bankruptcy court, affirmed by the Federal district court, determined that the growers had released their lien under the applicable release provisions of the California statute. The Ninth Circuit reversed, holding that such deferred payment plans did not, as a matter of law, constitute "arrangements being made for such payments which are satisfactory to the producer" that would effect a release.

## C. Subordination

In re GVF Cannery, Inc. is a third processor bankruptcy court case involving the California producer's lien. GVF Cannery filed a Chapter 11 bankruptcy proceeding in 1991 which was later converted to a Chapter 7 proceeding. A commercial bank held a security interest in GVF Cannery's inventory and other assets and received relief from the Bankruptcy Code automatic stay enabling the bank to foreclose on its inventory and other assets subject to its security interest. The Chapter 7 trustee abandoned the inventory. Pursuant to a stipulation (approved by the bankruptcy court) between a tomato grower who claimed a producer's lien in the inventory, the bank was permitted to sell the inventory to reduce the processor's debt to the bank, subject to the condition that the bank would reimburse the grower in full if the grower prevailed in his litigation in the bankruptcy adversarial proceeding with the bank.

The principal issue in the case was whether the grower had subordinated his producer's lien to the security interest of the bank. A standard subordination clause was included in the grower's contract with GVF Cannery as required by the bank in providing its working capital credit facility to the processor and was in a form prescribed by the bank. The bank was a third-party beneficiary to the contract between the grower and the processor. The grower, among other things, argued that the subordination constituted a waiver of the producer's lien which was ineffective under California law.

The bankruptcy court, in a 1995 decision upholding the priority of the grower, held that, under the facts of the case, the subordination agreement did not, as a matter of law, constitute an effective waiver, because it did not impart sufficient information to enable a waiving party to form a full understanding of the effect of subordinating a producer's lien. The bankruptcy court noted that the subordination agreement did not even state the magnitude of the existing debt owed to the bank at the time of executing the subordination, let alone the relationship of the debt to the value of the collateral, so that a person signing the subordination would be apprised by the document itself of what is being waived by the act of subordination.

The bankruptcy court concluded that the subordination of the producer's lien priority could only be accomplished after disclosure that is sufficient to support an informed relinquishment of priority by the subordinating party.

The bank appealed the decision of the bankruptcy court to the Federal district court. The court in an unreported decision affirmed the bankruptcy court in part, reversed the bankruptcy court in part, and remanded the case for further proceedings, holding that although the grower's subordination was properly subject to a waiver analysis, the bankruptcy court had applied too stringent a waiver test.

The Federal district court concluded that all that was required was that the grower be informed that (1) he had a statutory first priority lien; (2) by subordinating he was giving up his right to first priority; (3) his subordination or waiver would place him behind the creditor bank; and (4) if the processor went bankrupt and the processor's assets were not sufficient to cover its debt to the creditor bank, the grower would not receive any payment. On remand, the bankruptcy court has not yet reached a decision under the standard prescribed by the Federal district court.

## VII. Is the Producer's Lien a Secret Lien?

The California producer's lien has been criticized as a secret lien which is perfected without any notice or filing requirements. This criticism may be somewhat of a mischaracterization. In reality, most California lenders are aware of the lien. Indeed, both In re T.H. Richards Processing Co. and In re GVF Cannery, Inc. were cases which involved commercial lenders who attempted to obtain priority status of their security interests through waivers or subordinations of the producer's lien. The California producer's lien should be examined in the perspective of the policy consideration of affording protection to California farmers. As the Ninth Circuit has noted in the In re Loretto Winery Ltd. case, the clear legislative intention and purpose behind the lien statute is that producers of farm products be assured full payment for their products and that other creditors should not be allowed to benefit from the pockets of laborers and suppliers who have increased the value of the debtor's estate or, indeed, have created it.

## VIII. Farmer Cooperatives and the Producer's Lien

**A. Cooperative Processors**—Farmer cooperatives are organized under California and other State laws to allow farmers to combine their products and efforts in marketing their farm products in both unprocessed and processed form. Many farmer cooperatives process farm products for marketing. Under California law, a member who delivers the member's product to the cooperative for processing and marketing is not entitled to the protection of the California producer's lien. Although the statutory law on this question seems quite clear, this issue was recently litigated in a case in which the bankruptcy court in an unreported decision held that cooperative members do not have the protection of a producer's lien in products delivered to their cooperative. On appeal, this decision has been affirmed by the Federal district court. Since farmer cooperatives are formed and operated for the common good of their members, it seems only logical that members would have no producer's lien in these circumstances. Farmers who sell their products to cooperative processors but are not members of the cooperative, on the other hand, are entitled to the protection afforded by the producer's lien.

**B. Bargaining Cooperatives**—The California producer's lien statute empowers bargaining cooperatives to assert the producer lien rights of their members against a non-cooperative processor, thus facilitating the enforcement of the producer's lien of the members of the bargaining cooperative.

## IX. Proposed Legislation

**A. ABA "Task Force"**— This group has been working on amendments to Article 9 of the Uniform Commercial Code that would make a number of changes regarding security interests and liens. One possible amendment is to require all statutory liens to be perfected by a Uniform Commercial Code filing with the Secretary of State. If enacted into law in California, this would require a Uniform Commercial Code filing to perfect the producer's lien.

## ENDNOTES

**1.** Cal. Food & Agric. Code §§55631-55653; see generally Dale Bratton, Note, "The California Agricultural Producer's Lien, Processing Company Insolvencies, and Federal Bankruptcy Law: An Evaluation and Alternative Methods of Protecting Farmers," 36 Hastings L.J. 609 (1985).
**2.** Cal. Food & Agric. Code §§55631.
**3.** Cal. Food & Agric. Code §55635.
**4.** Cal. Food & Agric. Code §55636.
**5.** Cal. Food & Agric. Code §55631.
**6.** Cal. Food & Agric. Code §55631.
**7.** Cal. Food & Agric. Code §§ 55631 and 55634.
**8.** Cal. Food & Agric. Code §55631.
**9.** Cal. Food & Agric. Code §55634.
**10.** Cal. Food & Agric. Code §55633.
**11.** Cal. Food & Agric. Code §§55636 and 55637.
**12.** Cal. Food & Agric. Code §§ 55637 and 55639.
**13.** Cal. Food & Agric. Code §55637.
**14.** In re T.H. Richards Processing Co., 910 F.2d 639 (9th Cir. 1990); In re GVF Cannery, Inc., 188 B.R. 651 (Bankruptcy N.D. Cal. 1995).
**15.** Cal. Food & Agric. Code §35647.
**16.** Cal. Food & Agric. Code §55647.
**17.** Cal. Food & Agric. Code §55648.
**18.** Cal. Food & Agric. Code §55649.

19. Cal. Food & Agric. Code §55651.
20. Cal. Food & Agric. Code §55638.
21. 11 U.S.C. §545(1).
22. Cal. Food & Agric. Code §55635.
23. 11 U.S.C. §545(2).
24. In re Loretto Winery Ltd., 898 F.2d 715 (9th Cir. 1990).
25. In re Loretto Winery Ltd., 898 F.2d 715 (9th Cir. 1990); and In re T.H. Richards Processing Co., 910 F.2d 639 (9th Cir. 1990).
26. Under Cal. Food & Agric. Code section 55634, the lien remains on the products so long as the processor retains possession.
27. In re Loretto Winery Ltd., 898 F.2d at p. 721; see Riley C. Walter, "A Case For Avoidance or Secret Farmer Liens: The California Producer's Lien," 4 San Joaquin Agric. L.R. 37 (1994), for an analysis and criticism of this decision.
28. Cal. Food & Agric. Code §§ 55638 and 55872.
29. Cal. Food & Agric. Code §55841.
30. Cal. Food & Agric. Code §55922.29.
31. Cal. Food & Agric. Code §§ 55901, 55905 and 55906.
32. In re Loretto Winery Ltd., 898 F.2d at pp.722-23.31.
33. In re T.H. Richards Processing Co., 910 F.2d at p. 647.
34. In re GVF Cannery, Inc., 188 B.R. 651 (Bankruptcy N.D. Cal. 1995).
35. 11 U.S.C. §362(a).
36. In re GVF Cannery, Inc., 188 B.R. 651 (Bankruptcy N.D. Cal. 1995).
37. In re GVF Cannery, Inc., Case No. 96-20149 SW, U.S. District Court for the Northern District of California (Sept. 11, 1996).
38. Dale Bratton, Note, "The California Agricultural Producer's Lien, Processing Company Insolvencies, and Federal Bankruptcy Law: An Evaluation and Alternative Methods of Protecting Farmers," 36 Hastings L.J. 609 (1985); Riley C. Walter, "A Case For Avoidance or Secret Farmer Liens: The California Producer's Lien," 4 San Joaquin Agric. L.R. 37 (1994).
39. In re Loretto Winery Ltd., 898 F.2d at pp. 720-21.
40. Cal. Food & Agric. Code §54001 et seq.
41. Cal. Food & Agric. Code §55461.
42. California Bean Growers Assn. v. Bank of California, et al., Case No. 95-92817, Adv. Proc. No. 95-9140, Amended Memorandum Decision, April 2, 1996.
43. California Bean Growers Assn. v. Bank of California, et al., Case No. 95-92817, Order Denying Appeal and Bankruptcy Court Order, August 1, 1997.
44. Cal. Food & Agric. Code §55631.5

# OREGON AGRICULTURAL LIENS

Gerald G. Watson
Churchill, Leonard, Brown, Lodine & Hendrie, LLP

*(This article is for general educational purposes only and is not intended to be legal advice. Persons should contact their attorney with regard to their rights and obligations in a specific situation.)*

**Introduction**—Agriculture is a key sector of the Oregon economy. The transaction of business in the agricultural arena, like all segments of the economy, depends upon regular, predictable relationships that protect the reasonable expectations of those who are involved.

**What is a Lien?**— A lien is a statutorily created interest that gives the person who is protected by the lien, a *creditor*, certain rights in the property of another person, a *debtor*. Liens create certainty and security in transactions where people extend credit or perform work in advance of payment. Liens are important and can be very helpful in allowing complex commercial transactions to proceed smoothly.

There are many kinds of liens. A mortgage or trust deed are "liens" against real property; a "mechanics lien" protects people who perform services on tangible property; a "construction lien" is often used by contractors and subcontractors to secure payment for materials or work performed in residential and commercial construction. In addition to these well-known "liens," there are less prominent, but equally important liens that apply in agriculture. Key among those liens are the agricultural produce lien and the grain producers lien. Other relevant liens are the agricultural services lien, a nurserymans lien and possessory chattel liens.

As statutorily created interests, liens are "strictly construed" by courts. That means that the scope of a lien will probably not be expanded beyond what is specifically set forth in the statute. For example, if a particular product is not covered by the language of a lien statute, that lien will not apply even if the product is "similar" to one that is covered. Equally important, each particular lien needs to be properly created and implemented according to the procedure set forth by statute. A court is unlikely to ignore even what may appear to be minor defects in compliance with a statute.

**How Does a Lien Work?**—To understand how liens operate, it is necessary to understand three legal concepts related to liens: attachment, perfection, and priority. A lien is created when it is attached to the object of the lien. Depending on the kind of lien, that object could be land, a car, a house, or agricultural products. People who are in financial difficulty often owe money to many people. An "attached" lien is valid, but it will not necessarily prevail over the debtors obligations to other people. For one lien to prevail over another, it must have priority. The priority of a lien is determined by the time of its perfection. Perfecting a lien often requires that special steps be taken, such as filing a notice of the lien with some governmental agency. Once a lien is perfected, it normally has priority over all liens that are perfected afterwards. Similarly, it would not have priority over liens that were perfected earlier.

A creditor whose lien is perfected is often called a "secured creditor." Similarly, one whose lien has not been perfected is "unsecured." It is much better to have a perfected security interest with first priority than to be an unsecured creditor.

## Oregon Agricultural Liens

There are a number of specific statutorily created liens that directly affect agriculture in Oregon.

**Producers Liens**—Unlike California, which apparently has only one such lien, Oregon has two separate producer liens. The *Agricultural Produce Lien* covers fruit, berries, vegetables or meat animals sold or delivered to a food processor. The *Grain Producers Lien* is narrower in scope covering grain which is defined to mean wheat, corn, oats, barley, rye, flaxseed, certified

alfalfa seed, agricultural seed as defined in ORS 633.511(1), vegetable seed as defined in ORS 633.511, the seed of any cereal grain, soybeans, grain sorghum, dry beans and peas and any other grain for which standards are established by the State or the Federal governments.

Each lien has distinct requirements and operates somewhat differently. Unfortunately, a review of Oregon case law indicates that there are no recorded cases, either in State court or Federal bankruptcy court, interpreting those statutory provisions. Any ambiguities that do or may exist in the Oregon statutes have not been resolved by the courts. Thus, the following analysis is tentative and based only upon the language of the statutes.

**Agricultural Produce Lien (ORS 87.700 to 87.740)**—This lien applies only to "agricultural produce" defined as "fruit, berries, vegetables, or meat animals sold or delivered to a food processor." Any product that does not fit within those four categories or that is not "delivered to a food processor" would not be covered by this lien.

A "food processor" is defined by the statute to include a packing plant, cannery, creamery, or other processing plant that processes agricultural produce and is <u>owned or operated by any person other than a cooperative corporation</u>."(underlining added) By its terms, the statute excludes products delivered to a cooperative. It appears that Californias Producers Lien law has a similar provision. ***Several potential ambiguities in the scope of the lien should be noted. For example, food processor is defined to include a creamery, but the definition of agricultural produce does not seem to contemplate dairy products. Somewhat similarly, would the delivery of grapes (a fruit) to a winery constitute delivery to a "food" processor?***

**Attachment and Perfection**—The agricultural produce lien attaches to all of the agricultural produce and all of the other inventory of the food processor upon delivery to the food processor. It is apparently perfected upon filing (see ORS 87.715) If the agricultural produce consists of meat animals, the lien also attaches to accounts receivable of the food processor (ORS 87.705).

**Filing**—No immediate filing is required. However, within 20 days of the date on which payment is due (or in the case of meat animals within 20 days of the date the animals were delivered to the processor)[1], the producer claiming the lien shall file with the county recording officer in the county where the food is processed a statement setting forth the amount due, the name of the food processor, a description of the produce, a statement that amount claimed is a true and bona fide existing debt, and the date on which payment was due. (ORS 87.710). Although the statute does not clearly say so, presumably the failure to file, when required to do so, would mean that the right to a lien has been lost, or at least subordinate to any other security interest in the produce or other property of the debtor. Detailed notice must also be given to other creditors of the debtor

**Priority**—Except for tax liens, the lien created by ORS 87.705 is prior and superior to all others created by chattel mortgage, bill of sale, conditional contract or any security interest upon agricultural produce, without regard to whether such other liens or security interest attached to the produce before or after the date on which a lien created by ORS 87.705 attaches.

**Lien Foreclosure**—The agricultural produce lien is foreclosed by law similar to the other lien foreclosures. However, the suit to foreclose the lien must generally be brought within 6 months after a claim of lien is filed. If not, the lien ceases to exist.

[1] Payment is "due" on the date specified in the contract or if there is no contract or no due date is specified, then two days after the processor takes delivery of the agricultural produce. This particular provision would apparently preclude coverage if the producer without a specific due date delays filing its claim of lien beyond 22 days from the date of delivery.

# New Crops Development: Building R&D Funding Justification

Gary D. Jolliff
Professor of Crop Science
Department of Crop and Soil Science
Oregon Agricultural Experiment Station and
Oregon State University

**Introduction**— Surplus production and consequent low prices of agricultural commodities have been a regular peacetime phenomenon in the United States for more than a century. It was a problem in the 1870s when the USDA was formed, in the 1890s when cotton producers were encouraged to diversify their cropping systems and introduce new crops (Taylor and Taylor, 1952), and in the periods of 1933-1942, 1956-1973, and 1982-1995 (Figure 1). National farm policy aimed at agricultural income stabilization was initiated in 1935, but the problem remained 60 years later, despite large Government outlays (Tweeten, 1995). Several million farmers have been forced off the land because of insufficient economic opportunities.

U.S. farm policy was changed dramatically in 1996, but lacks strategic planning for new-crop development. Peacetime cropland reduction, i.e., the cropland taken out of production by Federal Government programs (Crosswhite and Sandretto, 1991) has increased since 1933 (Figure 1). Lack of sufficiently profitable new crop alternatives has resulted in lost revenue opportunities from idled cropland and costly Government outlays to keep the land idle.

Surplus production in the 20th century is due to a combination of rapidly increasing technology and agricultural policy. From 1918 to 1940, surpluses were substantially a consequence of the replacement of draft animals by farm tractors. Thereafter, it was exacerbated by increases in yields through advances in cultivars, pest control, mechanization, agronomic management practices, and availability of inexpensive nitrogen fertilizers, combined with Government programs that encouraged or required planting traditional crops.

With the biological revolution currently underway, yield-improving technologies can be expected to continue and to spread increasingly throughout the world. New crops development, particularly industrial crops (previously called chemurgic crops), have long been proposed as a vital partial solution to this problem. Clearly, the problem has not been solved, suggesting that the neglected search for alternative and new crops should be reconsidered (Janick et al., 1996).

There are obvious reasons why the private sector doesn't invest in new-crops research and development. New-crops development is: (1) long term, (2) high risk, and (3) may not yield benefits to the originators. Therefore, adapters and users intentionally wait until the profit potential is more obvious and closer-to-hand, before risking research and development investments for new crops (Bolen, 1993). Although these factors justify Government-funded intervention in agricultural research (Alston et al., 1994; Jolliff and Snapp, 1988; Jolliff, 1989), there has been extreme under-investment in new crops research and development, compared with that invested in the established agronomic crops, which are frequently in surplus (Jolliff, 1989). There is no voice for new crops, so Federal support has languished.

As a result of under-investment in research, potentially

1./ Adapted from 'New-Crops R&D: Necessity for Increased Public Investment', Pages 115-118. In J. Janick (Ed.). Progress in New Crops. (ASHS Press: Alexandria, VA) 1996. Also published in the Proceedings of the First Australian New Crops Conference. Vol.1 pp.144-145. U. Of Queenland, Gatton College, 1997. Sincere appreciation is extended to Steve Dewhurst and Dennis Kaplan, USDA, Office of Budget and Program Analysis, for providing historical budget data; to Carmen Sandretto, USDA's ERS for providing historic cropland reduction data used in Figure 1; to Dr. Abner Womack, and Gary Adams, Food and Agriculture Policy Research Institute, University of Missouri-Columbia, MO for providing the historical annual data on the seven crops for acreage reduction and participant returns per acre, and for reviewing the calculations; to Dr. James Cornelius, Department of Agricultural and Resource Economics, Oregon State University, and Dr. Rueben Buse, Department of Agricultural Economics, University of Wisconsin for guidance in preparation of the research and reviewing the calculations.

viable new crops have not been developed to the point of profitability for the private sector. A determination of the potential payoff to justify increased public sector investments in new-crops development is needed. The objective of this paper is to estimate Federal financial outlays and lost national revenue opportunities for the period of 1978 through 1994, associated with the absence of sufficient new-crop alternatives.

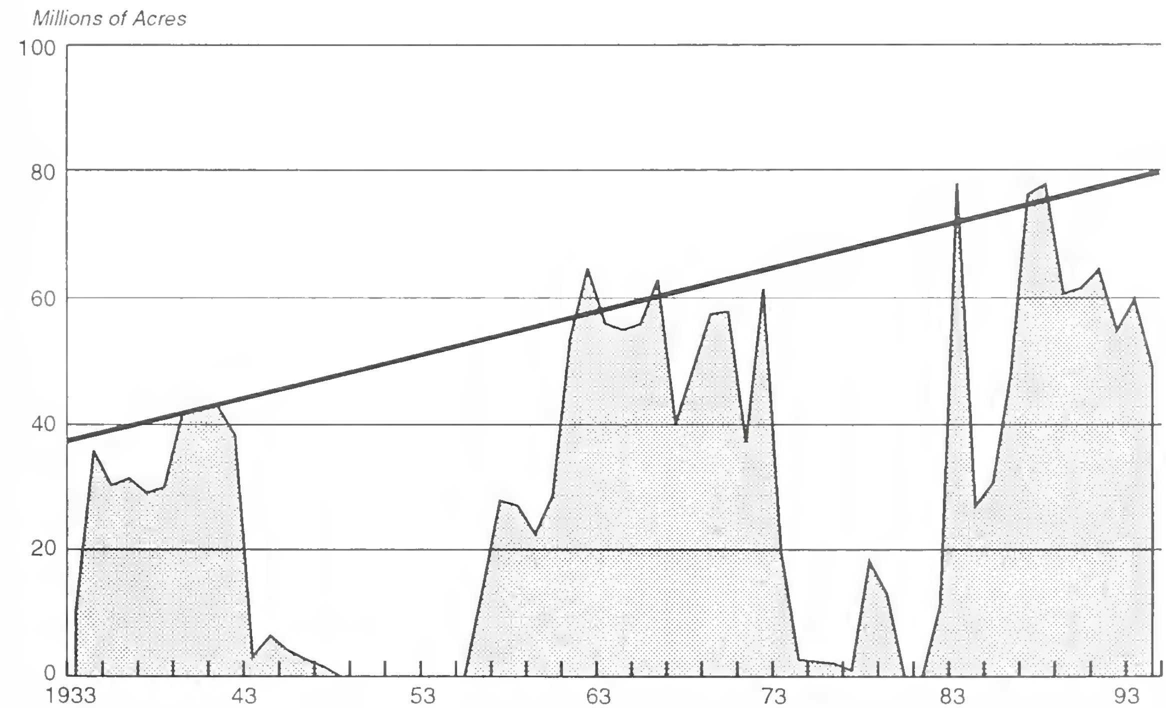
This study assumes that science, technology, expertise, and plant materials have existed which could have been mobilized during the past century to provide profitable new crops alternatives for U.S. farmers as an alternative to idling cropland or overproducing surplus crops.

**Determining Costs of Surpluses**—The total cost of crop over-production for the 17-year period 1978 through 1994 was the summation of the total cost of Federal outlays, plus an estimate of the total lost opportunity costs.

**Federal Outlays**—Included (1) cash outlays from Budget Function (BF) 351, (2) the value of certificates, and (3) interest. BF 351 of the Federal budget is a category which includes many aspects of outlays for farm income stabilization. Much of the expenditure is for surplus commodity-related programs, such as loans, subsidies, and costs of acquiring and storing commodity stockpiles. Some surplus-commodity-related costs, such as foreign agricultural export losses, crop improvement research, funded through the Agency for International Development (AID), and domestic donations of food are not included in BF 351 and are not estimated in this analysis. Also not included are some costs to the consumer and taxpayer such as inflated domestic prices (e.g. peanuts and sugar), due to Government program quotas. Certificates or outlays include the $8.4 billion cost of the 1984 Payment-In-Kind (PIK) program. The data source for both was the USDA Office of Budget and Program Analysis.

Interest on outlays (BF 351 and certificates) is based on 3-year U. S. Treasury security interest rates (Table B-72, Economic Report of the President, February, 1995). Interest was compounded annually. Sums for each year

Figure 1—**United States Cropland Acreage Reduction 1933-94.***




* *Millions of acres of cropland taken out of production (idled) by federal government programs (trend line: approximate fit to three means: 1934-1942 = 35; 1957-1972 = 47; 1983-1993 = 58). Adapted from Crosswhite and Sandretto (1991) and updated from C. Sandretto (pers. commun. 1995).*

were adjusted to 1987 dollars using the appropriate deflator (Table B-3, Economic Report of the President, February, 1995). Conversion of 1987 dollars to 1995 dollars was achieved by multiplying the 1987 dollars by the 1995 GNP Implicit Price Deflator of 1.281.

**Lost Wealth Estimates**—These are based on estimated revenue losses from idled croplands plus the consequent lost-multiplier effect, based on the economic benefit of new wealth which was not produced. Calculation of lost wealth is based on idled acreage and returns/acre data from the Food and Agricultural Policy Research Institute, University of Missouri-Columbia. Idled acres for each of seven crops (wheat, corn, sorghum, barley, oats, cotton, and rice) were multiplied by the return per acre of farmers who participated in the Government program for the respective crop. This is an estimate of financial opportunity for alternative crops on idled cropland. A multiplier effect of 2.0 was used to estimate the economic benefit to the economy from new wealth which could have been generated on idled land if profitable new crops had been developed for U.S. farmers. The values for Federal outlays and lost wealth for the period 1978 through 1994 are shown in table 1.

**New Crop Solutions**—The lack of profitable alternative crops for U.S. farmers from 1978-94 has been extremely costly for taxpayers, with severe social consequences to farmers and rural areas. Total costs for the 17-year period are estimated as $728 billion in 1987 dollars, equivalent to $932 billion in 1995 dollars. This represents only about one-third of the cropland idled since 1933 (figure 1). The compounding benefits lost because of idled land prior to 1978 are huge, and could be estimated to strengthen the argument.

Table 1— **Outlays and lost opportunities for crop agriculture, 1978-94.**

| *Category* | *Billions of 1987 Dollars* |
|---|---|
| Federal outlay Budget Function 351 | 254 |
| Certificates | 37 |
| Interest (BF 351 + Certificates) | 289 |
| Subtotal | 580 |
| Lost wealth opportunities | |
| Lost crop opportunities | 74 |
| Multiplier effect loss | 74 |
| Subtotal | 148 |
| Grand Total | **728** |

Clearly, an economic evaluation of the cost of crop surpluses requires careful examination in the context of new-crops development policy. The annual Federal budget for agricultural research is about $2 billion. Plant productivity research, an important component, is almost completely devoted to established crops. Very little funding or institutional structure is committed to new crops development. This seems to argue for a public-interest need for a Congress-mandated national voice for new crops development to compete for resources in the public policy arena.

Agricultural research yields high returns on investment. It can be questioned, however, whether the calculated rates of return in the literature took into account the high costs of Government programs associated with the generation of crop surpluses. Also, arguments are frequently being made that environmental and social costs of activities, such as farm programs, should be considered (Van Dieren, 1995). Reliable data are needed on impacts of agricultural research across different groups of agricultural stakeholders including consumers, farmers, environmentalists and conservationists (Thompson, 1996).

These types of accounting could strengthen the case for Federal investments in new crops development (Jolliff, 1989). Federal appropriations would need to be new crops-specific to assure resource use in the intended area. This implies that additional institutional innovation in national farm policy beyond the USDA Alternative Agricultural Research and Commercialization Corporation may be necessary to bring about needed change (Jolliff, 1989). A possible new crops initiative has been suggested in CAST Issue Paper 6 (Janick et al., 1996). Advances in new crops development may be important in raising the standard of living in many countries.

**Conclusion**—Historical fiscal evidence of the costs of surpluses justifies increased investment in the development of profitable and sustainable new crop alternatives for U. S. farmers. A long-term strategic national effort is needed to make maximum use of genetic diversity in crop agriculture.

## References


Alston, J. M., Pardey, P.G. and Carter, H.O. (Eds.). 1994. Valuing UC Agricultural Research and Extension. University of California, Division of Agriculture and Natural Resources, Agricultural Issues Center Publication No. VR-1: 33-51.

Bolen, C.D. 1993. New Crops From a Seed Company Perspective. In: New crops. (Ed. J. Janick and J.E. Simon) (Wiley Press: New York).

CAST. 1995. Sustainable Agriculture and the 1995 Farm Bill. Special Publication No. 18. (Council for Agricultural Science and Technology: Ames, Iowa).

Crosswhite, W. M., and Sandretto, C.L. 1991. Trends in Resource Protection Policies in Agriculture. In: Agricultural Resources: Cropland, water, and conservation. Situation and Outlook Report AR-23. (Economic Research Service, U.S. Department of Agriculture. Washington, D. C.) 42-49.

Janick, J., Blase, M. G., Johnson, D. L., Jolliff, G. D. and Myers, R. L. 1996. Diversifying U.S. Crop Production. Issue Paper 6. (Council for Agricultural Science and Technology: Ames, IA).

Jolliff, G. D. 1989. Strategic Planning for New Crop Development. Journal of Production Agriculture. 2: 6-13.

Jolliff, G. D., and S. S. Snapp. 1988. New Crop Development: Opportunities and Challenges. Journal of Production Agriculture 1: 83-89.

Taylor, H. C. and Taylor, A.D. 1952. The Story of Agricultural Economics in the United States, 1840-1932. (The Iowa State College Press: Ames, IA.)

Thompson, R.L. 1996. Keynote presentation. In: Agricultural Research Assessment: A Symposium Summary. (The Council on Food, Agricultural, and Resource Economics: Greenbelt, Maryland).

Tweeten, L. 1995. The Twelve Best Reasons for Commodity Programs: Why None Stands Scrutiny. Choices. Second Quarter: 4-7, 43-44.

Van Dieren, W. (Ed.). 1995. Taking Nature Into Account. A Report to the Club of Rome. Copernicus. (Springer-Verlag: New York.)

# Food Quality Protection Act

Janet L. Andersen, Ph.D.
Director, Biopesticides and Pollution Prevention Division
Office of Pesticide Programs
Environmental Protection Agency

### Goals of the Food Quality Protection Act (FQPA)

Greater protection for infants & children

Comprehensive, integrated approach to risk assessment and risk management using consistent, health-based standard

Regulation should be flexible enough to allow continuous update and reinvention in order to remain credible

### Highlight of FQPA

Single, health-based standard defined as "reasonable certainty of no harm"

Aggregate exposure must be considered (not just dietary but non-occupational routes such as drinking water, lawn and garden, and residential)

Cumulative exposure also considered (common mechanism of toxicity)

Specific determination that tolerances are safe for children and use of an additional 10 x "uncertainty factor" unless data are sufficient to allow a lower factor

Screening and testing program for endocrine disruptors

All existing tolerances to be reassessed within 10 years, considering worst first

Limitation on benefits consideration when reassessing tolerances; no benefits for new active ingredients

Publication of brochure which discusses risks and benefits of pesticides, advises consumers on ways to avoid those risks, lists "eligible" tolerances and alternatives to crops which may contain them.

Periodic registration review, with a goal of review every 15 years

Provisions for "safer" registrations, minor uses, and antimicrobials

### Implementation

Public input efforts underway — Food Safety Advisory Committee, Pesticide Program Dialogue Committee, Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Scientific Advisory Panel, Endocrine Disruptors Screening and Testing Advisory Committee, etc.

Implementation Plan issued in March, with update issued in October

Implementation plan outlined five principles for agency activities: sound science; health based approach; promotion of safer, effective pest control methods; openness; and accountability

### Sound Science/Health Based Approach

Interim decision logic developed

Proposed approaches to 10x, common mechanism and aggregate exposure

Promoted discussion on areas such as in-utero exposure and endocrine disruptors

Publication of a tolerance reassessment schedule which addresses "worst first" criteria (Organophosphates, Carbamates, B2s first)

For all tolerances set post-FQPA, special sensitivities of children have been considered

### Promoting Safer Effective Pest Control Methods

Published final guidance for reduced risk and pesticide applications

Continued expedited review of "safer" pesticides

Added Pesticide Environmental Stewardship Program (PESP) partners and supporters

Awarded grants for PESP partners and supporters

### Openness and Accountability

Established Food Safety Advisory Committee (helped develop interim decision logic)

Formed Workgroups within the Pesticide Program Dialogue Committee (PPDC), in areas such as minor use, consumer right-to-know, and new safety standard

Distributed Implementation Plan and periodic updates

Initiated Endocrine Disiruptors Screening and Testing Advisory Committee

All science issues have been taken to the FIFRA Scientific Advisory Panel

Meetings/workshops with stakeholders (e.g. minor use, antimicrobial, environmental groups) to discuss implementation activities

Establishment of Minor Use Program; Minor Use Crop Alliance formed to improve coordination and strengthen interaction with registrants

First annual antimicrobial progress report

Decisions are being made—as of end FY 97, 29 new active Ingredients and 387 Emergency Exemptions granted

**FQPA Minor Use Provisions**

Minor use "offices" at EPA and USDA

EPA—minor use team with members in each Division in the Office of Pesticides and a team leader working directly for the Office Director

USDA—new Pest Management Office working from the Deputy Secretary's Office

Extended exclusive use of data to registrants to add minor uses to pesticide label. One year for each three minor uses added up to a total of 3 more years of exclusive use.

Additional time to develop residue data to support minor uses for pesticides undergoing reregistration

**FQPA Minor Use Provisions**

Waivers for minor use data if incremental risk from the minor use would not pose "unreasonable adverse effect"

Expedited registration of new active ingredient solely for minor uses or if for every major use there are three or more minor uses also propose or minor use would replace a use canceled in last five years or minor use would prevent the need for a section 18

Extends comment period/waiting time to 180 days before EPA accepts voluntary cancellation

**FQPA Definition of Minor Use**

Crops less than 300,000 acres across US without sufficient economic incentive to get registration, and

1. Insufficient efficacious alternatives
2. Alternatives pose greater risk
3. Minor use is significant in managing pest resistance
4. Minor use plays a significant part in IPM

**Provisions Likely To Have the Most Impact**

Aggregate exposure

Cumulative exposure

Endocrine disrupter screening

Tolerance Reassessment

Effects on minor use chemicals

Consumer brochure (potentially)

Movement toward safer, reduced risk, alternatives (reduced risk policy, new standard, reregistration, etc.)

**Conclusion**

FQPA is a deliberate challenge to EPA to reinvent its risk assessment and decision making process

It pushes us on data, science, and resources

These are the right things to do, but they require tough decisions and will take some time, and
will require unprecedented stakeholder participation

Process will be refined, as will decisions, as we proceed

## ATTENDEES

**AGRICULTURAL BARGAINING COUNCIL**
744 Main St. Suite 1
Presque Isle, ME 04769
207/764-3380
Vernon DeLong

**AGRICULTURAL COUNCIL OF CALIFORNIA**
P.O. Box 1712
Sacramento, CA 95812
916/443-4887
Kristin Power

**APRICOT PRODUCERS OF CALIFORNIA**
2125 Wylie Dr., Suite 2A
Modesto, CA 95355
209/524-0801
Bill Ferriera, Connie Ferriera,
Gene Bays, Eleanor Bays

**CALIFORNIA CANNING PEACH ASSOCIATION**
P.O. Box 7001
Lafayette, CA 94549
510/284-9171
Ron Schuler
Ron Martella
Lloyd Narita
Azam Kham
Bill Bryan
Heidi Sanders

**CALIFORNIA FREESTONE PEACH ASSOCIATION**
P.O. Box 7001
Lafayette, CA 94549
510/284-9171
Rich Hudgins

**CALIFORNIA PEAR GROWERS**
4600 Northgate Blvd., Suite 210
Sacramento, CA 95824
916/924-0530
Terry W. Barton

**CALIFORNIA TOMATO GROWERS ASSOCIATION**
P.O. Box 7398
Stockton, CA 95267-0398
209/478-1761
John C. Welty
Jo Anne Hancock
Brian Kilmer
Clarence Vosti
Carl Evers

**CHURCHILL, LEONARD, BROWN, LODINE & HENDRIE, LLP**
P.O. Box 804
Salem, OR 97308-0804
503/585-2255
David H. Leonard
Jerry Watson

**ENVIRONMENTAL PROTECTION AGENCY**
401 M Street, Sw
Washington, DC 20460
703/308-8128
Janet Anderson, Ph.D.

**HANSON, BRIDGETT, MARCUS, KLAHOS & RUDY**
333 Market St. 23rd Floor
San Francisco, CA 94105
415/777-3200
Stephen B. Peck

**HAZELNUT GROWERS BARGAINING ASSOCIATION**
8101 SW Nyberg Rd. #201
Tualatin, OR 97062
503/692-5932
Michael Klein, Kelly Klein
Don Christensen, Laura Christensen
Larry Christenson, Lois Christenson
Michael Kerr, Sandra Kerr
Colin Kohlmeyer, Judy Kohlmeyer
Al Mansfield, She-She Mansfield
Jim Marnach, Jenene Marnach
Edwin Pardey, Pat Pardey
Elmer Skurdahl, Charlotte Skurdahl
Stan Vobora, Betty Vobora
Don Youngblood, Jeanne Youngblood
Milburn Ziegler, Velma Ziegler

**MALHEUR POTATO BARGAINING ASSOCIATION**
P.O. Box 665
Vale, OR 97918
503/473 -3122
Jack Pressley, Melinda Pressley
Bob Holmes

**MICHIGAN AGRICULTURAL COOPERATIVE MARKETING ASSOCIATION (MACMA)**
P.O. Box 30960
Saginaw, MI 48909
517/323-7000
Randy G. Harmson
Jerry L. Campbell
Richard L. Wadsworth

**MICHIGAN ASPARAGUS ADVISORY BOARD**
P.O. Box 900
DeWitt, MI 48820
517/669-4250
Donald Wadsworth

**MICHIGAN PROCESSING APPLE GROWERS**
P.O. Box 30960
Lansing, MI 48909
800/292-2653
Tom Butler
Dawn Drake
Chuck Stein

**MINISTRY OF AGRICULTURE AND FOOD**
Guelph, Ontario CANADA
Paul Glenney

**NATIONAL CONTRACT POULTRY GROWERS ASSOCIATION**
P.O. Box 824
Ruston, LA 71273
318/251-9227
John Morrision

**NATIONAL COUNCIL OF FARMER COOPERATIVES**
50 F Street, SUITE 900
Washington, DC 20001
202/626-8700
David Graves

**NATIONWIDE INSURANCE**
One Nationwide Plaza 3-14-05
Columbus, OH 43215-2220
614/249-5330
Willard Engel

**OLIVE GROWERS COUNCIL**
121 East Main St.
Visalia, CA 93291
209/734-1710
Adin A. Hester
Pat Akin

**ONTARIO VEGETABLE GROWERS MARKETING BOARD**
435 Consortium Ct.
London, Ontario N6E 2S8 CANADA
519/681-1875
John Mumford
Lloyd Arnold, Elaine Arnold
Walter Brown, Elfreida Brown
Mark Delanghe, Arlene Delanghe
Dave Epp
Richard Penner

**OREGONIANS FOR FOOD & SHELTER**
3415 Commercial St., SE
Salem, OR 97302
503/370-8092
Terry Witt, Patti Witt

**PERENNIAL RYEGRASS BARGAINING ASSOCIATION**
P.O. Box 3228
Salem, OR 97302
503/378-0195
Jim Carnes

**POTATO GROWERS OF IDAHO**
13314 N. Billy Lane
Chubbock, ID 83202
208/785-1110
Richard Watt

**POTATO GROWERS OF WASHINGTON**
P.O. Box 563
Othello, WA 99344
509/488-6688
Dale Lathim

**PRUNE BARGAINING ASSN.**
335 Teegarden Ave., Suite B
Yuba City, CA 95991
530/674-5636
Greg Thompson
Ken Lindauer, Dorothy Lindauer

**RAISIN BARGAINING ASSN.**
3425 N. First St. #209
Fresno, CA 93726-6819
209/221-1925
Wayne Albrecht, Judy Albrecht
Jim Andreas, Jill Andreas
Charanjit S. Batth, Shamsher K. Batth
Norman Engelman, Carolyn Engelman
Sam Esraelian
Richard Garabedian, Ellie Garabedian
John Kalebijian, Esther Kalebijian
Bob Kaprielian, Miriam Kaprielian
Steve Kister, Linda Kister
Vaughn Koligian, Mary Ann Koligian
Steve Lehman, Patty Lehman
Bill Martinelli, Lea Martinelli
Kay Paboojian, Jr., Rosemary Paboojian
John Pakchoian
George Porter, JoAnn Porter
Frank Silva, Janice Silva
Louis Spate, Rosalie Spate
Steve Spate, Tracy Spate

**SNAKE RIVER POTATO GROWERS**
RR 1, Box 240
Glenn's Ferry, ID 83623
208/366-2675
Ronald Buatte, Charla Buatte

**SNOKIST GROWERS**
P.O. Box 1587
Yakima, WA 98902-6026
509/453-5631
David Long

**SOUTHERN MINNESOTA FARM CROPS ASSOCIATION**
RR 1, Box 218
Sleepy Eye, MN 56085
507/794-2213
Dean Ibberson

**UNIVERSITY OF CALIFORNIA CENTER FOR COOPERATIVES**
One Shields Ave.
Davis, CA 95616
916/752-2408
Mahlon Lang
Karen Spatz

**USDA/APHIS**
Jamie L. Whitten Building, Room 302-E
14th & Independence Ave., SW
Washington, DC 20250-3431
202/690-0472
Charles P. Schwalbe

**USDA/RURAL BUSINESS–COOPERATIVE SERVICES**
STOP 3250
1400 Independence Ave., SW
Washington, DC 20250-3250
202/720-7558
Randall E. Torgerson
Andrew Jermolowicz

**USDA/RBS**
350 N. Dunham St.
Prineville, OR 97754
541/447-5171
Bob Haase

**ZOLLINGER CONSULTING**
1160 Corta Vista
Turlock, CA 95380
209/632-4013
Dave Zollinger

**U.S. Department of Agriculture**

**Rural Business–Cooperative Service**

Stop 3250

Washington, D.C. 20250-3250

Rural Business–Cooperative Service (RBS) provides research, management, and educational assistance to cooperatives to strengthen the economic position of farmers and other rural residents. It works directly with cooperative leaders and Federal and State agencies to improve organization, leadership, and operation of cooperatives and to give guidance to further development.

The cooperative segment of RBS (1) helps farmers and other rural residents develop cooperatives to obtain supplies and services at lower cost and to get better prices for products they sell; (2) advises rural residents on developing existing resources through cooperative action to enhance rural living; (3) helps cooperatives improve services and operating efficiency; (4) informs members, directors, employees, and the public on how cooperatives work and benefit their members and their communities; and (5) encourages international cooperative programs. RBS also publishes research and educational materials and issues *Rural Cooperatives* magazine.